

MOTION INFORMATION STATEMENT

Docket Number(s): 15-2821

Caption [use short title]

Motion for: Hold Appeal In Abeyance

SEC v. Miller

Set forth below precise, complete statement of relief sought:

Appellant seeks to hold the pending appeal in abeyance while the parties attempt to finalize a tentative settlement that would resolve this appeal.

MOVING PARTY: Donald R. Miller Jr. as Executor of the Estate of Charles J. Wyly Jr.  
 Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

OPPOSING PARTY: SEC

MOVING ATTORNEY: Kathleen M. Sullivan  
[name of attorney, with firm, address, phone number and e-mail]  
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OPPOSING ATTORNEY: Daniel Staroselsky  
[name of attorney, with firm, address, phone number and e-mail]  
100 F Street, N.E.  
Washington, DC  
202-551-5774; StaroselskyD@sec.gov

Court-Judge/Agency appealed from: U.S. District Court for the Southern District of New York (Oetken)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

Yes  No (explain): \_\_\_\_\_

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

Yes  No

Has this relief been previously sought in this Court?

Yes  No

Requested return date and explanation of emergency: \_\_\_\_\_

Opposing counsel's position on motion:

Unopposed  Opposed  Don't Know

Does opposing counsel intend to file a response:

Yes  No  Don't Know

Is oral argument on motion requested?

Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

Yes  No If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney:  
s/ Kathleen M. Sullivan

Date: August 3, 2017

Service by:  CM/ECF  Other [Attach proof of service]

# 15-2821-cv

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In the  
**UNITED STATES COURT OF APPEALS**  
**FOR THE SECOND CIRCUIT**

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U.S. SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff-Appellee,*

—v.—

DONALD R. MILLER, JR., IN HIS CAPACITY AS THE INDEPENDENT EXECUTOR OF  
THE WILL AND ESTATE OF CHARLES J. WYLY, JR., AKA CHARLES J. WYLY, JR.,

*Defendant-Relief Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**MOTION TO HOLD APPEAL IN ABEYANCE**

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*Attorneys for Appellant*

August 3, 2017

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Appellant Donald R. Miller, Jr., as Independent Executor of the Estate of Charles J. Wyly, Jr., respectfully submits this motion to hold the pending appeal in abeyance until such time as the parties can finalize a tentative settlement that would resolve this appeal and permit its voluntary dismissal. Plaintiff-Appellee the United States Securities and Exchange Commission (“SEC”) consents to this motion.

1. This appeal concerns a final judgment in an SEC civil enforcement action filed in 2010 covering conduct dated back to the 1990s. Following a jury trial on liability and two bench trials at the remedy phase, the U.S. District Court for the Southern District of New York entered a final judgment that credits the majority of the payments made pursuant to the judgment toward Appellant’s outstanding tax liabilities.

2. The Estate is currently litigating the extent of its tax liabilities in several proceedings involving the Department of Justice. On June 29, 2017, Appellant and representatives of the Department of Justice participated in a mediation that resulted in a tentative settlement proposal. The mediation was presided over by Christopher Nolland in Dallas, Texas. Based on preliminary discussions, the parties and mediator believe that a settlement can be reached resolving Appellant’s tax liabilities; they further believe that the SEC would recommend approval of a corresponding settlement in this case.

3. The parties in all relevant litigations need additional time to finalize the terms of the relevant settlements and to present them for approval at higher levels within the respective government agencies. If approved, these settlements would result in dismissal of the pending appeal. If not approved, the parties would advise the Court of the need to proceed with the appeal. Accordingly, Appellant respectfully requests that the Court hold the appeal in abeyance to allow settlement negotiations to continue. The SEC consents to this motion.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that the Court hold the appeal in abeyance pending finalization of a global settlement that would resolve this appeal.

DATED: August 3, 2017  
New York, New York

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Kathleen M. Sullivan

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